DEC 17 1955
HAROLD B. WILLEY, Clerk

SUPREME COURT OF THE UNITED STATES

No. 577

ELLIS WALKER HOWARD

and

ELLEN NEWMAN HOWARD,

Plaintiffs in Certiorari

-vs-

MILDRED DRAIN WHEELER

and

R. H. WHEELER,

Defendants in Certiorari

Petition For the Issuance of the Writ of Certiorari to the Court of Appeals of Georgia

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IN THE SUPREME COURT OF THE UNITED STATES OF AMERICA

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IN THE SUPREME COURT OF THE UNITED STATES OF AMERICA

ELLIS WALKER HOWARD

and

ELLEN NEWMAN HOWARD

Plaintiffs in Certiorari

-vs-

MILDRED DRAIN WHEELER

and

R. H. WHEELER,

Defendants in Certiorari

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF GEORGIA

To the Honorable, The Chief Justice and the Associate Justices of the Supreme Court of the United States of America.

I.

Petitioners ELLIS WALKER HOWARD and ELLEN NEWMAN HOWARD, husband and wife, name themselves as Plaintiffs in Certiorari, and name MILDRED DRAIN WHEELER and R. H. WHEELER as Defendants in Certiorari.

Petitioners respectfully petition this Court for a Writ of Certiorari to review a decision of the Court of Appeals of Georgia, which was adverse to them, and which arose out of an adoption proceeding originally filed by petitioners in DeKalb County, Georgia, Superior Court, and which came to said Court of Appeals on a bill of exceptions filed by Defendents in Certiorari, assigning error on the judgement

of the DeKalb Superior Court overruling and dismissing the objections of the natural parents to the adoption of the infant by the foster parents, who had had cusody of said child from birth until the time of the final hearing, under adoption agreements signed by both parents and under an order of temporary custody in said case, dated November 27, 1953. The objections were filed May 24, 1954, and came on before said trial court for hearing August 3, 1954. The objectors failed to show any legal cause for opposing the final order of adoption, other than a change of mind on their part and a desire to take back their child, coupled with the circumstances of their subsequent marriage to each other, which they alleged removed the difficulties they had previously felt prevented them from acknowledging the child as their own.

The Court of Appeals of Georgia, being unable to pass on the said assignments of error in said bill of exceptions, certified to the Supreme Court of Georgia the following question based on these facts:

> "In an adoption proceeding where the consent of the natural mother in the case of an illegitimate child, or the natural parents in the case of a legitimate child, as provided in Georgia Code (Ann. Supp.) § § 74-403, 74-405, has once been freely and voluntarily given, may such consent be revoked by the natural parent or parents as a matter of right at any time prior to the final decree of adoption, or, in order to revoke such consent, must some sufficient legal reason be shown therefor?"

To that question, the Supreme Court of Georgia answered:

> "In an adoption proceeding where the consent of the parent or parents is freely and voluntarily given in writing, the parent or parents thus consenting may, without showing any cause, withdraw such consent at any time

before the final judgement of adoption, as provided for in Georgia Code (Ann. Supp.) § 74-414, Ga. L. 1941, P. 305; 1949, p. 1157 is rendered. The consent is unilateral, without consideration, and is for these reasons not a contract but a mere gratuituous offer."

Petitioners contend that said decision deprives them of their Constitutional rights for that the same is in violation of the Fourteenth Amendment of the Constitution of the United States of America, Codified in Georgia Code Section 1-815, reading as follows:

"Citizenship. (Section 1.). All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property without due process of law, nor deny any person within its jurisdiction the equal protection of the laws.

and

Article 1, Section 10 of the Constitution of the United States of America as codified in Georgia Code Section 1-134, that part of which is applicable to this case, reading as follows:

"No state shall pass any law impairing the obligations of a contract."

and

Section 1, Article 4 of the Constitution of the United States, as codified in Georgia Code Section 1-401, reading:

"Full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state."

Petitioners say that the Supreme Court of Georgia and the Court of Appeals of Georgia, both sitting as the highest and final legal tribunals of this State, have, by so holding, impaired the legal contract of adoption executed freely and voluntarily by the Defendants in Certiorari to Plaintiffs in Certiorari.

A. REPORTED OFFICIAL REPORTS OF SAID CASE.

(1) Wheeler, et al vs. Howard, et al, Case No. 18893, Supreme Court of Georgia Reports, Volume 211, pages 596-8. Decided April 11, 1955. Motion for Rehearing denied May 11, 1955.

(2) Wheeler, et al vs. Howard, et al, Case No. 35437, Court of Appeals of Georgia, 92 Georgia Apeals Reports, pages 547-8. Decided July 13, 1955. Motion for rehearing denied July 25, 1955.

Remittitur from Supreme Court of Georgia to Court of Appeals of Georgia, denying writ of certiorari, dated September 26, 1955.

B. JURISDICTION

Jurisdiction of this Court is invoked under Title 28, page 1257 of the United States Code, which provides in part, as follows:

"Final judgments or decrees rendered by the highest court of a state in which a decision could be had may be reviewed by the Supreme Court, as follows:

"(i) By Writ of Certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a state statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed

under the Constitution treaties or statutes of, or commission held or authority exercised under, the United States."

and

Rule 19, and that portion of sub-paragraph (1B) thereof of the Rules of the Supreme Court, providing in part, as follows:

"Where a Court of Appeals, . . . has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision."

Plaintiffs in Certiorari are bona fide residents of the State of Georgia, and Defendents in Certiorari allege themselves to be residents of the State of Texas.

(ii) The judgment of the Supreme Court of Georgia, the Court of final authority in this State, in the case of Wheeler, et al vs. Howard, et al, Case No. 18893, Volume 211, Georgia Reports, pages 596-8, decided April 11, 1955, motion for rehearing denied May 11, 1955, which said Court, in answer to the certified question of the Court of Appeals of Georgia, said that "the consent of the parent or parents once freely and voluntarily given in an adoption proceeding could before final order be withdrawn without showing any cause, and that the consent of adoption is unilateral, gratuitous and without consideration."

The Judgment of the Court of Appeals of Georgia rendered in said case in consequence of said Supreme Court of Georgia in answering the certified question, which was a final decree by said Court.

Wheeler, et al vs. Howard, et al, Case No. 35437, Court of Appeals of Georgia, 92 Georgia Appeals Reports, pages 547-8; decided July 13, 1955; motion for rehearing denied July 25, 1955.

(iii) Petitioners' application for the Writ of Certiorari filed in the Supreme Court of Georgia in the case of Howard, et al vs. Wheeler, et al, Case No. 19127, seeking to review the decision that was adverse to them in case No. 35437, Court of Appeals of Georgia, Georgia Appeals Reports Volume 92, pages 547-8, the said certiorari being denied by said Supreme Court of Georgia, September 26, 1955, and the remittitur from the Supreme Court of Georgia denying said certiorari filed in the office of the Clerk of the Court of Appeals of Georgia, September 26, 1955.

The application of petitioners to the Court of Appeals of Georgia for the staying of the remittitur of said Court to the DeKalb County, Georgia (Decatur) Superior Court, and the order of said Court staying the same pending application to the Supreme Court of the United States for the Writ of Certiorari, dated September 26, 1955.

C. "3. The following questions are presented by this appeal:

"(a) That the rendition of said judgment by said Court of Appeals of Georgia did fail and refuse to give full faith and credit to another State, its public acts, records and judicial proceedings, in violation of Article 4, Section 1, Constitution of the United States of America, as codified in the Code of Georgia, Section 1-401, reading as follows:

'Acts and records of the States. Full Faith and Credit shall be given in each State to the public Acts, Records and Judicial Proceedings of every other State. And Congress may by general laws prescribe the manner in which such Acts, Records and Proceedings shall be proved, and the effects thereof.'

For that it did either overlook, or if considered, did not give full faith and credit to the laws of the State of Texas, in violation as herein alleged for that the evidence in the

record showed there was a certified copy of the petition for divorce and judgment rendered by a court of competent jurisdiction in the State of Texas based on cruel treatment, ultimately resulting in a divorce by the first Mrs. Wheeler against R. H. Wheeler, one of the parties in this case, and the father of said child. Under Texas Statute Senate Bill 140, and that portion therof pertaining to divorce, Article 4632, a disability is placed on both parties where a suit for divorce is predicated on the grounds of cruel treatment and provides that neither party shall marry any other person for a period of twelve months after such divorce is granted. There was sworn testimony of the objectors to the fact that they had not waited until twelve months had elapsed from the granting of the divorce to the first Mrs. Wheeler, but had married within the prohibited time.

"We say that it is obvious the opinion of the Court is wrong in this particular in that it has failed to give full faith and credit to the laws of another State, and while holding that the child is legitimate, they have overlooked the provision of the Statute holding that such a marraige within the prohibited time is not legal.

"(b) For that the decision of the Court of Appeals of Georgia deprives appellants of their property without due process of law in that it will deprive them of their Constitutional rights for that said decision is in violation of the 14th Amendment of the Constitution of the United States of America, codified in Georgia Code Section 1-815, reading as follows:

'Citizenship. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of

the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.'

"(c) That the decision of the Court of Appeals of Georgia rendered in this case is in violation of Article 1, Section 10 of the Constitution of the United States of America, as codified in Georgia Code Section 1-134, that part of which is applicable to this case and these parties as follows:

'No State shall pass any law impairing the obligation of contracts.'

"That the said Court of Appeals of Georgia, by its decision as an appellate tribunal of this State, has impaired the obligations of the contract of adoption freely and voluntarily executed by the parents of said child to Mr. and Mrs. Howard, in holding that said contract is unilateral, gratuituous and without consideration and is not a contract, but a mere gratuituous offer.

"(d) That the Court of Appeals of Georgia by the language of the decision rendered in holding that the consent of adoption may be withdrawn at any time by the parent, the same once having been freely and voluntarily given, without any reason, has read into the adoption statute of the Code of Georgia, Section 74-403, language which is neither expressed nor implied. Said Code Section, as amended by Georgia Acts 1941, p. 301, reading as follows:

'Consent; living parents and child of 14 years or older. —Except as otherwise specified in the following sections, no adoption shall be permitted except with the written consent of the living parents of a child. In the case of a child 14 years of age, or over, the consent of such child

also shall be required, and must be given in writing in the presence of the court.'

"(e) The decision of the Court of Appeals of Georgia in its judgment and opinion in this case is erroneous and wrong in that by so holding it has failed and refused to follow the precedent binding on the Court of Appeals of Georgia the prior decision of the Supreme Court of Georgia in cases of this kind, which prior cases have held that once the consent of adoption has been freely and voluntarily given, it cannot be captiously withdrawn without good and sufficient legal reason.

"Janes v. Cleghorn, 54 Ga. 11 (2), reading as follows:

'Where the parental authority over an infant child is released to another, such release is not revocable without some sufficient legal reason is shown therefor.'

"There was no evidence adduced at the hearing before the trial court as to any good or sufficient legal reason why the parents desired to withdraw their consents, except that the mother had changed her mind and was remorseful. The Court of Appeals held in this cause that no reason was necessary or required to be given by the parents and that the consents could be withdrawn at any time before the final order of adoption was passed without any reason."

D. Georgia Code Ann. 74-101:

"What children are legitimate; presumption; legitimation by marriage of parents. –All children born in wedlock, or within the usual period of gestation thereafter, are legitimate. The legitimacy of a child thus born may be disputed. Where possibility of access exists, except in cases of divorce from bed and board, the strong presumption is in favor of legitimacy, and the proof should be clear to establish the contrary. If pregnancy existed at

the time of the marriage, and a divorce is sought and obtained on that ground, the child, though born in wedlock, is not legitimate. The marriage of the mother and reputed father of an illegitimate child, and the recognition of such child as his, shall render the child legitimate; and in such case the child shall immediately take the surname of his father."

Georgia Code Ann. 74-105:

"Father's obligation as to maintenanec, etc. –Until majority, it is the duty of the father to provide for the maintenance, protection, and education of his child."

Georgia Code Ann. 74-202:

"Father's obligation to support. –The father of an illegitimate child shall be bound to maintain him. This obligation shall be good consideration to support a contract by him. He may voluntarily discharge this duty; if he shall fail or refuse to do it, the law will compel him."

Georgia Code Ann. 74-203:

"Mother's rights. –The mother of an illegitimate child shall be entitled to the possession of the child, unless the father shall legitimate him as before provided. Being the only recognized parent, she may exercise all parental power."

Georgia Code Ann. 74-403:

"Summons; notice to nonresidents; hearing; consent of child-placing agency. –Upon the filing of the petition the court shall issue summons to the next of kin, parents or guardians, brothers and sisters, if living within the State, and legal notice, if a nonresident, by service if possible, otherwise by publication once a week for four weeks in the official organ of the county where such proceedings are pending. After the expiration of 30 days

from the date of filing of the petition, the case shall be placed upon the regular calendar of the court for a hearing before the judge without a jury, and the court shall hear evidence from witnesses as to the good character, moral fitness and financial ability of the petitioner to care for the child, as well as all other allegations in the petition. When a child has been awarded by court order, or otherwise legally and permanently surrendered, to the custody of a licensed child-placing agency for permanent placing in a foster home, such agency shall be served with summons in lieu of parents and relatives, and the written consent of such agency shall be filed with the court before adoption can be granted. (Acts 1855-6, p. 260; 1859, p. 36; 1882-3, p. 59; 1889, p. 69; 1927, p. 142.)"

Georgia Code Ann. 74-404:

"Temporary custody of child granted on first hearing. Final adoption. Relationship. Inheritance by adopting father. –Upon the first hearing the court may pass an order only granting temporary custody of the child to the petitioner. Final adoption shall be granted only upon a second hearing after the child shall have been in the custody and care of the petitioner for a period of six months. The decree of adoption shall declare the said child to be the adopted child of the petitioner and capable of inheriting his estate, and also what shall be the name of such child. Thenceforward the relation between such person and the adopted child shall be, as to their legal rights and liabilities, the relation of parent and child, except that the adopting father shall never inherit from the child. To all other persons the adopted child shall stand as if no such act of adoption had been taken. (Acts 1855-6, p. 260; 1859, p. 36; 1882-3, p. 59; 1889, p. 69; 1927, p. 142.)"

Georgia Code Ann. 74-405:

"Decree of adoption to be filed with registrar of vital statistics. –A copy of the decree of adoption shall be filed with the State Board of Health. (Acts 1927, p. 142; 1933, p. 12.)"

Georgia Code Ann. 74-414:

"Final order of adoption. –At any time after the expiration of six months from the date of the interlocutory order, the court shall set down for a hearing in chambers the question of whether the adoption sought shall be made final, and notice thereof shall be mailed by the clerk to the State Department of Public Welfare and to the person or persons on whom the petition is required to be served under section 74-408. Any person objecting to the entry of a final order of adoption shall file such objections in writing prior to the date assigned for a hearing, which objections shall be passed on by the court at such hearing. If the court is satisfied that a final order of adoption should be entered, the court shall enter a decree of adoption, declaring the said child to be the adopted child of the petitioner, and capable of inheriting his estate, and also what shall be the name of such child. Thereafter, the relation between such person and the adopted child shall be as to their legal rights and liabilities, the relation of parents and child, except that petitioner or petitioners shall never inherit from the child. When the final adoption shall have been granted, the parents of the child shall be divested of all legal rights or obligations from them to the child or from the child to them; and the child shall be free from all obligations of any sort whatsoever to the said natural parents. Said adopted child shall be considered in all respects as if he were a child of natural bodily issue of petitioner or petitioners, and shall enjoy every right and privilege of a natural child of petitioner

or petitioners; and shall be deemed a natural child of petitioner or petitioners to inherit under the laws of descent and distribution in the absence of a will and to take under the provisions of any instrument of testamentary gift, bequest, devise, or legacy, unless expressly excluded therefrom. (Acts 1941, p. 305; 1949, p. 1157.)"

E. This petition for certiorari is sought to review the judgment of the Court of Appeals of Georgia in said aforesaid proceedings.

The first time that these Plaintiffs in Certiorari had the opportunity to raise the Federal questions, as herein set out, was when the Supreme Court of Georgia answered the certified question propounded to it by the Court of Appeals of Georgia, in holding that the consent of adoption in said case was unilateral, without consideration, was not a contract, and futhermore, in said decision, said Court held that:

"While we can not consider matters not embraced in the question in reaching our conclusion, we do point to what this record shows as abundant proof of the wisdom of our decision that the consent may be arbitrarily withdrawn at any time before final judgment. It shows the infant to have been an illegitimate, but that, since the consent was signed, the parents have married, thus legitimatizing the child as provided in Code § 74-101."

"Said Federal questions sought to be reviewed were raised at that stage of the proceedings in petitioners' motion for a rehearing, filed in said Court, April 22, 1955, and denied by the Supreme Court, May 11, 1955, and that portion thereof reading as follows:

"This is the first intimation that movants have had of the fact, and as they now contend, that if this decision is allowed to stand, the same being adverse to them, it will deprive them of their Constitutional right for that said

decision is in violaton of the Fourteenth Amendment of the Constitution of the United States of America, codified in Georgia Code Section 1-815, reading as follows:

'Citizenship. (Section 1.) All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws.'

and Article One, Section 10 of the Constitution of the United States of America as codified in Georgia Code Section 1-134, that part of which is applicable to this case, reading as follows:

'No State shall pass any laws impairing the obligations of contracts.'

"And in this particular, we say that the Supreme Court of Georgia, sitting as the highest tribunal, has, by its decision in this case, impaired the obligations of the contract of Mr. and Mrs. Howard with the mother and father of the illegitimate child, parties to this proceeding, in holding that said contract is unilateral, gratuituous and without consideration, and not a contract, but a mere gratuituous offer. Movants contend the contract is not unilateral, that it was with consideration, was not a gratuituous offer, and by reason of the authorities cited by movants, the Court should so hold that it was with consideration, and futhermore, that its withdrawal should not be permitted without good and sufficient legal grounds."

And the following points were again raised in petitioners' application for the writ of certiorari to the Supreme Court of Georgia, filed August 25, 1955, and denied September 26,

1955:

"(a) Petitioners assign error generally upon the judgment of the Court of Appeals of Georgia reversing the trial court and holding that in an adoption proceeding the parents thus consenting may, without showing any cause, withdraw such consent at any time before the final judgment of adoption.

"(b) That the consent of adoption is unilateral, without consideration and for those reasons not a contract, but a mere gratuituous offer.

"(c) That the rendition of said judgment by said Court of Appeals of Georgia did fail and refuse to give full faith and credit to another State, its public acts, records and judicial proceedings, in violation of Article 4, Section 1, Constitution of the United States of America, as codified in the Code of Georgia, Section 1-401, reading as follows:

'Acts and records of the States. Full Faith and Credit shall be given in each State to the public Acts, Records, and Judicial Proceedings of every other State. And the Congress may by general laws prescribe the manner in which such Acts, Records and Proceedings shall be proved, and the effects therof.'

For that it did either overlook, or if considered, did not give full faith and credit to the laws of the State of Texas, in violation as herein alleged for that the evidence in the record showed there was a certified copy of the petition for divorce and judgment rendered by a court of competent jurisdiction in the State of Texas based on cruel treatment, ultimately resulting in a decree of divorce by the first Mrs. Wheeler against R. H. Wheeler, one of the parties to this case, and the father of said child. Under Texas Statute Senate Bill 140, and that portion thereof pertain-

ing to divorce, Article 4632, a disability is placed on both parties where a suit for divorce is predicated on the grounds of cruel treatment and provides that neither party shall marry any other person for a period of twelve months after such divorce is granted. There was sworn testimony of the objectors to the fact that they had not waited until twelve months had elapsed from the granting of the divorce to the first Mrs. Wheeler, but had married within the prohibited time.

"We say that it is obvious the opinion of the lower court is wrong in this particular in that it has failed to give full faith and credit to the laws of another State, and while holding that the child is legitimate, they have overlooked the provision of the Statute holding that such a marriage within the prohibited time is not legal.

"(d) For that the decision of the Court of Appeals of Georgia deprives these petitioners of their property without due process of law in that it will deprive them of their Constitutional rights for that said decision is in violaion of the 14th Amendment of the Constitution of the United States of America, codified in Georgia Code Section 1-815, reading as follows:

'Citizenship. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.'

"(e) That the decision of the Court of Appeals of Georgia rendered in this case is in violation of Article 1, Section 10 of the Constitution of the United States of Amerca,

as codified in Georgia Code Section 1-134, that part of which is applicable to this case and these parties as follows:

'No State shall pass any law impairing the obligations of contracts.'

That the said Court of Appeals of Georgia, by its decision as an appellate tribunal of this State, has impaired the obligations of the contract of adoption freely and voluntarily executed by the parents of said child to Mr. and Mrs. Howard, in holding that said contract is unilateral, gratuituous and without consideration and is not a contract but a mere gratuituous offer.

"(f)) That the Court of Appeals of Georgia by the language of the decision rendered in holding that said consent of adoption may be withdrawn at any time by the parent, the same once having been freely and voluntarily given, without any reason, has read into the adoption statute of the Code Section, 74-403 of Georgia, for that said language so used and employed by the Court of Appeals of Georgia in its decision in this case has read therein language which is neither expressed nor implied.

"(g) The decision of the Court of Appeals of Georgia in its judgment, opinion and decision in this case is erroneous and wrong in that by so holding it has failed and refused to follow as precedent binding on the Court of Appeals of Georgia the prior decisions of the Supreme Court of Georgia in cases of this kind, which prior cases have held that once the consent of adoption has been freely and voluntarily given, it cannot be captiously withdrawn without good and sufficient legal reasons."

Petitioners say further that all of the questions herein raised were embraced in their brief and motion for rehearing filed in the Court of Appeals of Georgia in said case.

F. REASONS FOR THE GRANT OF THE WRIT OF CERTIORARI

(1) This case falls squarely within the type of case in which a certiorari will be granted by this Court for that it involves an adoption proceeding which is of great and widespread interest because many other persons are similarly involved, including helpless and unwanted infants who are being given security. It is a matter of great public concern of general importance affecting the happiness, security and well being of those individuals who want to and are adopting unwanted children.

(2) This decision is of such importance that it should be reconciled with previous decisions heretofore rendered by the Supreme Court of Georgia (Durden v. Johnson, 194 Ga., 689; Bently v. Terry, 59 Ga., 555-7; Altree, et al v. Head, 90 Ga. App., 601; Janes v. Cleghorn, 54 Ga., 11 et seq.) and this decision is in direct conflict with previous holdings of that Court. This Court should not permit the imposition of legal cruelty on anyone by its decision.

(3) This decision is of further importance to the public generally in that if it is allowed to stand, it will permit untold hardships on innocent and unsuspecting parties who seek in good faith to adopt unwanted children, and to spend their time, money, and loving care and attention in the early life of children, when their needs are the greatest, and who become attached to the loving arms and warm hearts of their foster parents, knowing nor wanting any other love.

(4) Futhermore, to hold that a consent of adoption is without consideration is inviting the rankest, rottenest sort of blackmail to be perpetrated on innocent foster parents, and it is of further importance in that it has failed to give full faith and credit to the laws and records of a sister State, Texas, in that it involves Constitutional questions of the due process laws of this State, the impairment of obligations of

contracts, and likewise the contravention of prohibitions imposed by the Constitution of the United States as hereinabove set forth.

(5) Futhermore, the Court has overlooked and has failed to apply previous decisions of the Supreme Court of Georgia in holding that a consent of adoption, once freely given, cannot be captiously withdrawn, but there must be good and sufficient legal reasons before it can be withdrawn.

(6) To so hold as the Court has held in this case, is depriving these petitioners of their property without due process of law, in violation of the Constitution of the United States and of Georgia, as herein alleged, and on which error has been assigned.

(7) Futhermore, to so hold as the Court has held is to impair and has impaired a valid, legal binding contract of adoption between the parties to this proceeding, in violation of the Constitution of the United States and of the State of Georgia, as herein alleged.

(8) Futhermore, to hold as the Court has held in this case is contrary to law, equity and good conscience.

(9) The holding by the Court of Appeals of Georgia and the Supreme Court of Georgia in this case is without precedent.

(10) The holding by the Court of Appeals of Georgia that the contract of adoption is without consideration is obviously wrong for that the Court has not taken into consideration that the adopting parents have assumed the obligations of support, maintenance and education as fixed by law and made mandatory on the natural parents. Automatically with the signing of the consent of adoption, the natural parents are relieved of the civil and criminal responsibilities imposed by the laws of this State on parents who

neglect or abandon their minor dependent children, thus transferring those responsibilities and liabilities from the natural parents to the adopting parents. Therefore, it is clearly seen that the consideration that the Court refers to is evident at all stages of the adoption proceeding.

(11) These petitioners were vested with the full, complete and legal right to the custody, possession and control of said minor child by the voluntary consents to its adoption, signed by the mother and father to these petitioners, and under and by virtue of Code Section 74-108 of the Annotated Code of Georgia, it is provided by the law of this State that until majority the child shall remain under the control of the father, who is entitled to his services and the proceeds of his labor, but this parental power shall be lost by "(1) Voluntary contract releasing the right to a third person, (2) Consenting to the adoption of the child by a third person."

And now, wihin the time provided by law and within ninety (90) days of the date of the final order and judgment of the Court of Appeals of Georgia, to-wit, September 26, 1955, denying further review in the case of Wheeler, et al vs. Howard, et al, No. 18893, come these petitioners and pray that a Writ of Certiorari issue under the seal of this Court directed to the Court of Appeals of the State of Georgia to the end that this cause may be reviewed and determined by this Court, as provided by the Statutes of the United States, and that the judgment and decision herein of the said Court of Appeals of Georgia be reversed by this

Court, and for such other and further relief as to the Court may seem proper.

This the 6th day of December, 1955.

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APPENDIX "A"

IN THE SUPREME COURT OF GEORGIA

CASE NO. 18893

WHEELER,et al vs. HOWARD, et al

Decided April 11, 1955

Rehearing denied May 11, 1955

Volume 211, Ga. Reports, pp. 596-8

In an adoption proceeding, where the consent of the parent or parents is freely and voluntarily given in writing, the parent or parents thus consenting may, without showing any cause, withdraw such consent at any time before the final judgment of adoption, as provided for in Code (Ann. Supp.) § 74-414, is rendered.

The consent is unilateral, without consideration, and is for these reasons not a contract but a mere gratuituous offer, and its withdrawal without cause is not forbidden by the following decisions: Janes v. Cleghorn, 54 Ga. 9; Bently v. Terry, 59 Ga. 555 (27 Am. R. 399); Durden v. Johnson, 194 Ga. 689 (22 S. E. 2d 514); Sessions v. Oliver, 204 Ga. 425 (50 S. E. 2d 54) –all dealing with contracts. The decision in Keheley v. Koonce, 85 Ga. App. 893 (70 S. E. 2d 522), involved a mere consent and hence that decision is applicable here. It was there pointed out, and we think with sound logic, that, since those seeking to adopt may dismiss their proceedings at any time before final judgment, the parents, who are other parties that are primarily concerned, may also withdraw their consent at any time before final adoption.

While we cannot consider matters not embraced in the question in reaching our conclusion, we do point to what this record shown as abundant proof of the wisdom of our decision that the consent may be arbitrarily withdrawn at

any time before final judgment. It shows the infant to have been an illegitimate, but that, since the consent was signed, the parents have married, thus legitimatizing the child.

APPENDIX "B"

IN THE COURT OF APPEALS OF GEORGIA

CASE NO. 35437

WHEELER, et al vs. HOWARD, et al

Decided July 13, 1955

Rehearing denied July 25, 1955

Volume 92 Ga. App. Reports, pp. 547-8

Townsend, J. This adoption case came to this court by bill of exceptions from the Superior Court of DeKalb County, assigning error on the judgment of that court overruling and dismissing objections of the natural parents to the adoption of an infant by foster parents who had had custody of said infant from birth until the time of the final hearing under adoption agreements signed by both parents, and under an order of temporary custody in this case dated November 27, 1953. The objections were filed May 24, 1954, and came on for hearing August 3, 1954. The objectors failed to show any legal cause for opposing the final order of adoption, other than a change of mind on their part and a desire to take back their baby, coupled with the circumstances of their subsequent marriage to each other which removed the difficulties they had previously felt prevented them from acknowledging the child as their own.

This court certified to the Supreme Court the following question based on these facts: "In an adoption proceeding where the consent of the natural mother in the case of an illegitimate child, or the natural parents in the case of a le-

gitimate child, has once been freely and voluntarily given, may such consent be revoked by the natural parent or parents as a matter of right at any time prior to the final decree of adoption, or, in order to revoke such consent, must some sufficient legal reason be shown therefor?" To this question the Supreme Court replied that parents thus consenting may, without showing any cause, withdraw such consent at any time before the final judgment of adoption.

Accordingly, the trial court erred in overruling the objections of the natural parents, which objections showed that they were withdrawing their consent to the adoption prior to the final order in said case, and in granting the prayers of the petition for permanent adoption.

APPENDIX "C"

Code of Georgia Annotated, Section 74-101:

When children are legitimate; presumption; legitimation by married parents. –All children born in wedlock, or within the usual period of gestation thereafter, are legitimate. The legitimacy of a child thus born may be disputed. Where possibility of access exists, except in cases of divorce from bed and board, the strong presumption is in favor of legitimacy, and the proof should be clear to establish the contrary. If pregnancy existed at the time of the marriage, and a divorce is sought and obtained on that ground, the child, though born in wedlock, is not legitimate. The marriage of the mother and reputed father of an illegitimate child, and the recognition of such child as his, shall render the child legitimate; and in such case the child shall immediately take the surname of the father.

Georgia Code Annotated, Section 74-108:

Parental power. –Until majority, the child shall remain under the control of the father, who is entitled to his ser-

vices and the proceeds of his labor.

Georgia Code Annotated, Section 74-202:

What children are illegitimate. –An illegitimate child, or bastard, is a child born out of wedlock, and whose parents do not subsequently intermarry, or a child the issue of adulterous intercourse of the wife during wedlock, or a child who is not legitimate within the meaning of Section 74-101.

Georgia Code Annotated, Section 74-203:

Mother's rights. –The mother of an illegitimate child shall be entitled to the possession of the child, unless the father shall legitimate him as before provided. Being the only recognized parent, she may exercise all the paternal power.

Georgia Code Annotated, Section 74-403:

Summons; notice to nonresidents; hearing; consent of child-placing agency. –Upon the filing of the petition the court shall issue summons to the next of kin, parents or guardians, brothers and sisters, if living within the State, and legal notice, if a nonresident, by service if possible, otherwise by publication once a week for four weeks in the official organ of the county where such proceedings are pending. After the expiration of 30 days from the date of filing of the petition, the case shall be placed upon the regular calendar of the court for a hearing before the judge without a jury, and the court shall hear evidence from witnesses as to the good character, moral fitness and financial ability of the petitioner to care for the child, as well as all other allegations in the petition. When a child has been awarded by court order, or otherwise legally and permanently surrendered, to the custody of a licensed child-placing agency for permanent placing in a foster home, such agency shall be served with summons in lieu of parents and relatives, and the written consent of such agency shall be

filed with the court before adoption can be granted.

Georgia Code Annotated, Section 74-404:

Temporary custody of child granted on first hearing. Final adoption. Relationship. Inheritance by adopting father. –Upon the first hearing the court may pass an order only granting temporary custody of the child to the petitioner. Final adoption shall be granted only upon a second hearing after the child shall have been in the custody and care of the petitioners for a period of six months. The decree of adoption shall declare the said child to be the adopted child of the petitioner and capable of inheriting his estate, and also what shall be the name of such child. Thenceforward the relation between such person and the adopted child shall be, as to their legal rights and liabilities, the relation of parent and child, except that the adopting father shall never inherit from the child. To all other persons the adopted child shall stand as if no such act of adoption had been taken.

Georgia Code Annotated, Section 74-405:

Same; illegitimate children. –If the child be illegitimate, the consent of the mother alone shall suffice. Such consent, however, shall not be required if the mother has surrendered all of her rights to said child to a licensed child-placing agency, or to the State Department of Public Welfare.

Georgia Code Annotated, Section 74-414:

Final order of adoption. –At any time after the expiration of six months from the date of the interlocutory order, the court shall set down for a hearing in chambers the question of whether the adoption sought shall be made final, and notice thereof shall be mailed by the clerk to the State Department of Public Welfare and to the person or persons on whom the petition is required to be served under section

74-408. Any person objecting to the entry of a final order of adoption shall file such objections in writing prior to the date assigned for a hearing, which objections shall be passed on by the court at such hearing. If the court is satisfied that a final order of adoption should be entered, the court shall enter a decree of adoption, declaring the said child to be the adopted child of the petitioner, and capable of inheriting his estate, and also what shall be the name of such child. Thereafter, the relation between such person and the adopted child shall be as to their legal rights and liabilities, the relation of parents and child, except that petitioner or petitioners shall never inherit from the child. When the final adoption shall have been granted, the parents of the child shall be divested of all legal rights or obligations from them to the child or from the child to them; and the child shall be free from all obligations of any sort whatsoever to the said natural parents. Said adopted child shall be considered in all respects as if it were a child of natural bodily issue of petitioner or petitioners, and shall enjoy every right and privilege of a natural child of petitioner or petitioners; and shall be deemed a natural child of petitioner or petitioners to inherit under the laws of descent and distribution in the absence of a will and to take under the provisions of any instrument of testamentary gift, bequest, devise, or legacy, unless expressly excluded therefrom.

APPENDIX "D"

Durden v. Johnson, et al. 194 Ga. Rep., 689:

1. Except as related to controversies between the father and mother of a child, it is the rule that until majority the child shall remain under the control of the father unless the parental power shall be lost, which, among other ways, may be "voluntary contract, releasing the right to a third person."

2. Where, after the death of the father, the mother becomes entitled to the custody and control of a child, such parental power and right may be lost by her just as in the case of the father (Code, § 74-106); and a clear, definite, and certain voluntary contract releasing her right to the child to a third person becomes binding upon her, and is not subject to revocation without good cause shown.

Bently v. Terry, et al. 59 Ga. Rep., 555:

1. Parent and Child–Contract Releasing Control Over Child. –The father of an infant may, by voluntary contract, release his parental power over his child to another.

2. Same–Same–Consideration. –The agreement to care for the child, and the fact that the child is taken when sick, and nursed into health and strength, and supported properly and comfortably for five years, are sufficient considerations to support such a contract; and the contract, though made with the wife by the child's faher, will be enforced if acquiesced in by the husband.

3. Same–Same–Revocation. –Such contract is not revocable, except for sufficient legal reasons, such as bad treatment of the child and the like.

Altree, et al v. Head, 90 Ga. App., 601:

It appearing from the record in this case that the natural mother of the child sought to be adopted had by a voluntary contract relinquished her parental rights in the child to the applicant, and that the adoptive father, the husband of the natural mother, had forfeited any parental rights to the child that he might have had by reason of cruel treatment of the child while she was legally in his custody, and it appearing that, because of such facts, the child was legally in the custody of the applicant whose domicile was shown to be in Bartow County, the superior court of that county had

jurisdiction to hear the adoption case; and it further appearing that the applicant is a morally fit person and financially able to have custody of the child, the court did not err in entering a final decree in favor of the applicant.

Wilkinson v. Lee, 138 Ga., Rep., 360

1. A father is entitled, prima facie, to the control of his minor child.

(a) But parental power may be lost "by voluntary contract, releasing the right to a third person." or "by failure of the father to provide necessaries for his child."

(b) A contract releasing the right of parental power over a child must be clear, definite, and certain.

2. Where a father, a few days after the death of his wife, voluntarily told the great-grandfather of his child, three days old, that he might take and keep the child as long as he and his wife lived, or until the child was twenty-one years old, and the great-grandfather did take and keep, maintain, and protect it until it was abducted by the father, at three years of age, this was a voluntary contract on the part of the father releasing his right to the child to a third person, and it was sufficiently definite and certain to be enforced.

(a) In such a case the contract is not void as being unilateral.

(b) Nor is it void and unenforceable for want of consideration.

Janes v. Cleghorn, 54 Ga. Rep., at p. 11:

Where the parental authority over an infant child is released to another, such release is not revocable without some sufficient legal reason is shown therefor.

And further, in the body of its decision, the Court had this to say, on page 15:

The motherless child was taken when it was only 17 days old and under a contract with its father that the foster parents would take it, raise and educate it as their own child, and now after they have had all the trouble with it and it has become of interest to its foster parents, their affections necessarily blended with and interwoven with its existence and welfare and fondly clustered around the child, to hold that the parent could captiously and without good and sufficient legal grounds revoke his contract and take the child away from them would be a species of cruelty and bad faith which the laws do not recognize or tolerate. That such a contract should not be revocable may fairly be inferred from the fact that only one of this class of contracts specified in the statute is made revocable, and that it is when the parent consents to the child receiving the proceeds of his own labor.

Keheley v. Koonce, et al, 85 Ga. App., 893:

1. The court did not err in denying the motion to dismiss the petition for adoption. The petition was brought on the theory that the child was illegitimate, and under the act of 1941 (Ga. L. 1941, p. 301; Code, Ann. Supp., § 74-405), the consent of the mother alone in such a case will suffice.

2. Where, as here, the natural mother has shown circumstances under which her consent to the adoption of her child was not freely and voluntarily given, with full knowledge of the facts, and also has shown a change in her circumstances after her consent was given which constituted good cause for withdrawal of her consent, and where her consent was withdrawn, it was error to grant the adoption without the consent of the natural mother of the child sought to be adopted.

Sessions v. Oliver, et al. 204 Ga. Rep., 425:

1. If an order is equivocal and susceptible of more than

one interpretation, it will be construed consistently with the theory that the judge performed his duty by considering the evidence and making a finding from it, where the issue is one for such determination.

2. Under the facts and circumstances disclosed by the record in this case, the trial judge abused his discretion in failing to award custody of a minor child to the mother of the child.

3. No ruling is necessary on the exception to the order reopening the case for the introduction of further evidence, since the ruling, if error, was harmless.

4. On the basis of a change in conditions, the evidence demanded a finding in favor of the mother as to custody of the youngest child and demanded a finding in favor of the father as to custody of the oldest child.

IN THE SUPREME COURT OF THE

UNITED STATES OF AMERICA

ELLIS WALKER HOWARD

and

ELLEN NEWMAN HOWARD

Plaintiffs in Certiorari

-vs-

MILDRED DRAIN WHEELER

and

R. H. WHEELER,

Defendants in Certiorari

Service of the within and foregoing petition for the Writ

of Certiorari, the same consisting of 19 typewritten pages, is this day acknowledged, copy received, together with copy of Appendix "A", "B", "C" and "D", pages numbers 20 through 30 inclusive.

This the 6th day of December, 1955.

Carl A. Herbig
Attorney for Defendants in Certiorari

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IN THE

Supreme Court of the United States

October Term, 1955

No. 577

ELLIS WALKER HOWARD and
ELLEN NEWMAN HOWARD
Petitioners

vs.

MILDRED DRAIN WHEELER and
R. H. WHEELER
Respondents

Brief in Response to Petition for Writ of Certiorari to the Court of Appeals of the State of Georgia

STATEMENT OF FACTS

The action upon which the instant petition for writ of certiorari is based was upon a petition for adoption of a minor child and the objections filed to said adoption proceedings in the Superior Court of DeKalb County, Georgia.

The plaintiffs in certiorari, Ellis Walker Howard and Ellen Newman Howard, are the plaintiffs in the petition for adoption seeking to adopt the minor son of the respondents, Mildred Drain Wheeler and R. H. Wheeler, who filed timely objections to said proposed adoption. The petition for adoption alleged, in part, that a minor son was born to Mildred Drain, an unmarried woman, on August 28, 1953, and that R. H. Wheeler was the reputed putative father, that both mother and putative father of said child consented in writing to said proposed adoption, and the written consent dated September 1, 1953 of each was attached to and made a part of said pleadings. The petition was filed September 4, 1953, with the court. (R-Pleadings)

On November 17, 1953, without notice to respondents, the case came on to be heard at interlocutory hearing and temporary custody of said minor child was granted to petitioners. (R-Decrees)

On May 24, 1954, and before final decree of adoption, respondents duly filed their objections to said petition for adoption alleging, in part, that the mother was physically upset at time of signing consent and that the mother and father had since married. (R-Pleadings)

Thereafter on August 3, 1954, the objections came on to be heard by the Superior Court of DeKalb County and, on August 18, 1954, judgment was entered overruling said objections of the natural parents. (R-Decrees)

On August 29, 1954, without notice to respond-

ents, a final hearing was heard by said trial court and final judgment was entered granting the adoption of said minor child to petitioners. (R-Decrees)

To the order overruling the objections and to the final judgment, respondents excepted and filed their bill of exceptions in the Court of Appeals of the State of Georgia. (R-Pleadings)

Before deciding said alleged errors of the inferior court, the Court of Appeals certified certain questions to the Supreme Court of Georgia. The Supreme Court of Georgia answered said questions by their reported decision on April 11, 1955, and rehearing was denied on May 11, 1955, deciding that natural parents may withdraw any consent given at anytime before the final judgment of adoption. (*Wheeler et al. vs Howard et al.*, 211 Ga. 596, 87 S.E.2d 377.)

Thereafter the Court of Appeals of the State of Georgia decided on July 13, 1955, and rehearing denied on July 25, 1955, that the trial court erred in overruling the objections showing that the consent had been withdrawn and reversed the judgment of the inferior court. *(Wheeler et al. vs Howard et al.*, 92 Ga. App. 547, 88 S.E.2d 699.)

The petitioners filed their petition for writ of certiorari to the Supreme Court of Georgia and said writ of certiorari was denied by said court on September 14, 1955. (R-Decrees)

On September 26, 1955, remittitur denying writ was received by Court of Appeals of State of Geor-

gia and a supersedeas was granted staying the enforcement by said appellate court pending the outcome of plaintiffs' petition for writ of certiorari to the Supreme Court of the United States. (R-Orders)

ARGUMENT OF LAW AND CITATION OF AUTHORITIES

It is the contention of the plaintiffs in certiorari that the lower courts discriminated against them and the decision of said courts deprived them of their constitutional rights in that *Article 4, Section 1 of the Constitution of United States* was violated and that full faith and credit was not given to a certain Texas law and especially that part pertaining to disabilities placed upon certain divorced persons. *Texas Statute Senate Bill 140, Article 4632.*

This clause used in the Constitution does not, however, require a greater effect to be given to a state statute in other states than is given to it by the courts of the enacting state.

> *Ohio vs Chattanooga Boiler and Tank Co.*, 289 U.S. 439, 77 L.Ed. 1307, 53 S.Ct. 663

The courts of the State of Texas have held repeatedly that a marriage consumated in violation of this statute is not void but merely voidable. The only parties that may attack the validity of such a marriage are the parties who have married one another in violation of such statute. Not even the

former mate of the party in violation of said statute may contest the validity of such marriage.

Ex Parte Castro, 115 Tex. 77, 273 S.W. 795

Evans vs Hunt et al., 195 S.W.2d 710

The respondents in their briefs to both the Supreme Court of Georgia and to the Court of Appeals of Georgia in the case before this court, argued the effect that this statute has had in the martial laws of Texas and construction placed upon it by the Texas Courts.

It will be seen, nevertheless, in the reported opinion in the case of *Wheeler et al. vs Howard et al.*, 211 Ga. 596, 87 S.E.2d 377, that Chief Justice Duckworth states that the marriage was not a factor embraced in the question in reaching their conclusion.

It is certainly a fallacy for the petitioners in certiorari to allege that either their rights were violated or they were discriminated against under *Article 4, Section 1 of the Constitution of the United States.*

As to petitioners' contention of discrimination under the *Fourteenth Amendment to the Constitution of the United States*, the record itself will refute this. The record reveals the full and complete course this case has taken from trial court to the appellate courts and the several motions for rehearings.

"Due Process of Law", as contemplated by the Fourteenth Amendment, has been construed to mean the administration of general laws of a state ac-

cording to established rules, not violative of the fundamental principles of private rights, by a competent tribunal having jurisdiction of the subject matter and proceeding upon notice and hearing.

King vs State, 173 Ga. 432, 163 S.E. 168, 171

Caldwell vs Texas, Texas 1891, 11 S.Ct. 224, 137 U.S. 697

Duncan vs Missouri, 14 S.Ct. 570, 152 U.S. 382

Under this construction, petitioners have beyond doubt been accorded every opportunity, and have manifestly taken advantage of such opportunity, to avail themselves of the rights and remedies open to them in the proper tribunals of the State of Georgia.

Finally it is the contention of the petitioners in certiorari that *1933 Georgia Code, (Ann. Supp.)*, Sections 401 through 422, as amended, and codifying the present adoption laws of the State of Georgia, that the consent of the natural parent or parents given for the purpose of proposed adoption of their minor children are contracts between the natural parent or parents and the proposed foster parent or parents. And therefore a good and valid legal reason must be shown to withdraw such alleged contracts.

Further the petitioners contend that the decision of the Supreme Court of Georgia deciding that a consent for adoption is unilateral, without consid-

eration, and is therefore not a contract but a mere gratuituous offer, constitutes a discrimination against petitioners in that such decision has impimpaired the obligations of a contract, contrary to *Article 1, Section 10 of the Constitution of the United States.*

This reasoning of the petitioners is fallacious. First of all it is well settled that a contract, if any, should be clearly proved before it invokes the protection of this clause of the Constitution. The plaintiffs in certiorari have never shown nor do they now show that the written consent is a complete contract, having all of the elements required to be enforceable.

The part of the 1941 Adoption Laws of Georgia governing necessary consent are codified in four sections of the code. Since the within case covers the consent of legitimate child, the father of said child having married the mother since birth and has acknowledged the child as his, see *1933 Code of Georgia, (Ann. Supp.), Section 74-101*, the following section is quoted in part:

> "Except as otherwise specified in the following sections, no adoption shall be permitted except with the written consent of the living parents of a child. . . . . "

1933 Code of Georgia, (Ann. Supp.), Section 74-411 reads, in part, as follows:

> "The report and findings of the investigating

agency shall, among other things, include the following:

"(1) Why the natural parent or parents, if living, desire to be relieved of the care, support, and guardianship of the child.

"(2) Whether or not the parent, parents or guardian of the child have relinquished control over the child. . . . . "

1933 Code of Georgia, (Ann. Supp.), Section 74-413 reads, in part, as follows:

" . . . . The court at such time shall give consideration to the investigation report and to the recommendations therein contained, if such a report has been made. If the court is satisfied that the natural parents have just cause to be relieved of the care, support and guardianship of said child, or have abandoned the said child, or are morally unfit to retain the custody of said child, ... "

1933 Code of Georgia, (Ann. Supp.), Section 74-414 reads, in part, as follows:

"At any time after the expiration of six months from the date of the interlocutory order, the court shall set down for a hearing in chambers the question of whether the adoption sought shall be made final, and notice thereof shall be mailed by the clerk to the State Department of Public Welfare and to the person or persons on whom the petition is required to be served under Section 74-408. Any person objecting to the entry of a final order of adoption shall file such objection in writing prior to the date assigned for a hearing. If the court is satisfied that a final order of adoption should be entered, the court shall enter a decree of adoption, ... "

These code sections quoted above were cited by Chief Justice Duckworth of the Supreme Court of Georgia, in writing the opinion in the case of *Wheeler et al. vs. Howard et al.*, 211 Ga. 596, 87 S.E.2d 377, which in part, says on the bottom of page 597 the following:

> " . . . If the signed written consent is all the law requires, then why the concern about the reason for giving it? If, as must be the intention of the law, this report discloses that the parents have no reason for consenting, the law intends that the adoption be denied, then we can see no difference in whether this appears in the report or by signed pleadings of the parents praying that the court not allow the adoption."

The plaintiffs in certiorari cited the following cases in their petition:

Janes vs Cleghorn, 54 Ga. 9

Bently vs Terry, 59 Ga. 555, 27 Am. R. 399

Durden vs Johnson, 194 Ga. 689, 22 S.E.2d 514

Wilkinson vs Lee, 138 Ga. 360

Sessions vs Oliver, 204 Ga. 425, 50 S.E.2d 54

Kehely vs Koonce et al., 85 Ga. App. 893, 70 S.E.2d 522

Altree et al. vs Head, 90 Ga. App. 601

The question before the court in the Janes, Bently, Durden, Wilkinson and Sessions cases involved contracts under Section 74-108, *1933 Code of Georgia* and not the adoption laws of 1941 under Section 74-401 et seq. The present case follows the decision

in the Kehely case and although the Altree case was also an adoption case, the parental control was lost by acts of abandonment and not by written consent. The Altree case was full bench split decision and a very strong and lengthy dissenting opinion was written.

The respondents can not find anything nor have petitioners shown in the present case facts, laws or court decisions wherein the written consent in the present contract has all the necessary elements of an enforceable contract and that it is not unilateral or merely a gratuituous offer.

Sections 74-403, 74-404 and 74-405 quoted on pages 10, 11 and 12 and again Sections 74-403 and 74-404 on pages 25 and 26 of plaintiffs' in certiorari petition for writ as sections of the *Georgia Code* is in error for they have been repealed by the Adoption Laws of 1941.

Wherefore, respondents pray:

(a) That the said petition for writ of certiorari be denied;

(b) That this court refuse to review the said judgment of the State Court.

Respectfully submitted,

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